

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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GREG SCHMITT,

Plaintiff,

v.

LYON COUNTY SHERIFF,

Defendant.

Case No. 3:17-cv-00117-MMD-WGC

ORDER ACCEPTING AND ADOPTING
REPORT AND RECOMMENDATION
OF MAGISTRATE JUDGE
WILLIAM G. COBB

Before the Court is the Report and Recommendation of United States Magistrate Judge William G. Cobb (ECF No. 3) (“R&R” or “Recommendation”) relating to plaintiff’s application to proceed *in forma pauperis* (ECF No. 1) and *pro se* complaint (ECF No. 1-1). Plaintiff had until July 10, 2017, to file an objection. To date, no objection to the R&R has been filed. Plaintiff, however, has filed an amended complaint. (ECF No. 4.)

This Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where a party timely objects to a magistrate judge’s report and recommendation, then the court is required to “make a *de novo* determination of those portions of the [report and recommendation] to which objection is made.” 28 U.S.C. § 636(b)(1). Where a party fails to object, however, the court is not required to conduct “any review at all . . . of any issue that is not the subject of an objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Indeed, the Ninth Circuit has recognized that a district court is not required to review a magistrate judge’s report and recommendation where no objections have been filed. See *United States v. Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the standard

1 of review employed by the district court when reviewing a report and recommendation to
2 which no objections were made); *see also Schmidt v. Johnstone*, 263 F. Supp. 2d 1219,
3 1226 (D. Ariz. 2003) (reading the Ninth Circuit's decision in *Reyna-Tapia* as adopting the
4 view that district courts are not required to review "any issue that is not the subject of an
5 objection."). Thus, if there is no objection to a magistrate judge's recommendation, then
6 the court may accept the recommendation without review. *See, e.g., Johnstone*, 263 F.
7 Supp. 2d at 1226 (accepting, without review, a magistrate judge's recommendation to
8 which no objection was filed).

9 Nevertheless, this Court finds it appropriate to engage in a *de novo* review to
10 determine whether to adopt Magistrate Judge Cobb's R&R. Upon reviewing the R&R
11 and proposed complaint, this Court finds good cause to accept and adopt the Magistrate
12 Judge's R&R in full.

13 It is therefore ordered, adjudged and decreed that the Report and
14 Recommendation of Magistrate Judge William G. Cobb (ECF No. 3) is accepted and
15 adopted in its entirety.

16 It is further ordered that plaintiff's application to proceed *in forma pauperis* (ECF
17 No. 1) without having to prepay the full filing fee is granted; plaintiff will not be required to
18 pay an initial installment fee. Nevertheless, the full filing fee will still be due, pursuant to
19 28 U.S.C. § 1915, as amended by the Prisoner Litigation Reform Act of 1996. Plaintiff is
20 permitted to maintain this action to conclusion without the necessity of prepayment of
21 fees or costs or the giving of security therefor. This order granting *in forma pauperis*
22 status shall not extend to the issuance of subpoenas at government expense.

23 It is further ordered that, pursuant to 28 U.S.C. § 1915, as amended by the
24 Prisoner Litigation Reform Act of 1996, the Nevada Department of Corrections will pay to
25 the Clerk of the United States District Court, District of Nevada, 20% of the preceding
26 month's deposit to the account of Greg Schmitt, Inmate No. 78153 (in months that the
27 account exceeds \$10.00) until the full \$350 filing fee has been paid for this action. The

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1 Clerk will send a copy of this order to the Attention of the Chief of Inmate Services for the
2 Nevada Department of Corrections, P.O. Box 7011, Carson City, NV 89702.

3 It is further ordered that, even if this action is dismissed, or is otherwise
4 unsuccessful, the full filing fee will still be due, pursuant to 28 U.S.C. §1915, as
5 amended by the Prisoner Litigation Reform Act of 1996.

6 It is further ordered that the Clerk detach and file the complaint (ECF No. 1-1).

7 It is further ordered that Defendant Judge Fletcher is dismissed with prejudice.

8 It is further ordered that Lyon County Sheriff's Office is dismissed.

9 It is further ordered that Plaintiff be given leave to file an amended complaint to
10 name the correct defendant, Lyon County. The Court notes that Plaintiff has filed the
11 amended complaint and will be permitted to proceed on his amended complaint. (ECF
12 No. 4.)

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14 DATED THIS 21st day of July 2017.

A handwritten signature in blue ink, appearing to read 'Miranda M. Du', is written over a horizontal line.

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16 MIRANDA M. DU
17 UNITED STATES DISTRICT JUDGE
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